

SENATE BILL 4198

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 59,  
Chapter 8, Part 2, relative to surface mining.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 59-8-201 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) This part shall be known and may be cited as the "Tennessee Non-Coal Surface Mining Law."

Section 2. Tennessee Code Annotated, Section 59-8-202 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Definitions.

Except as otherwise required by the context, the following terms when used in this part or in regulations issued thereunder shall be construed to mean:

(1) "Area affected" means the area of land from which overburden is to be or has been removed and upon which spoil is to be or has been deposited. It also includes areas of land s (other than public roads) that are physically altered, impacted, or disturbed in the process of surface mining or rock harvesting.

(2) "Board" means the Water Quality Control Board as created by the Tennessee *Water Quality Control Act of 1977*, compiled in Title 69, chapter 3.

(3) "Borrow" means soil or other unconsolidated material that is not segregated due to physical or chemical characteristics, does not undergo additional processing, and is used only as fill material.

(4) "Commissioner" means the commissioner of Environment and Conservation or the commissioner's designees;

(5) "Director" means the director of the division of Water Pollution Control;

(6) "Mineral" means any solid material or substance of commercial value found in natural deposits on or in the earth, but does not include coal or borrow;

(7) "Operation" means all of the premises, facilities, and equipment and the use thereof in the removal, exploration, or processing of minerals at a designated surface mine area;

(8) "Operator" means any person engaged in surface mining who disturbs or intends to disturb one (1) acre or more of land; or who removes overburden for the purpose of determining the location, quality or quantity of any natural mineral deposit. Any operator who has obtained a permit, and otherwise complied with the provisions of this part may subcontract any part, or all, of the mining of the lands covered by the permit to subcontractors and such subcontractors are not considered an "operator" within the meaning of this part;

(9) "Orphan mine" means land affected by surface mining operations prior to enactment of the Tennessee Strip Mine Law of 1967 (repealed);

(10) "Overburden" means all earth and other materials which are removed to gain access to the mineral in the process of surface mining;

(11) "Person" means any and all natural persons and created entities, including any individual, partnership, limited liability company, corporation, public or private institutions, municipality, county, state or federal agency, any other association of individuals, or any officer or agent thereof;

(12) "Reclamation" means the process of backfilling, grading and shaping of the disturbed land in the affected area, constructing water control facilities, the taking of measures to control current or future air, water or soil pollution, the planting of vegetation, and other measures; all directed toward placing the affected area in a stable condition;

(13) "Rock Harvesting" means the removal of rock for commercial purposes;

(14) "Shaping" means grading, backfilling and other earth moving required by the provisions of this part to be done by the operator in connection with the reclamation of the area affected;

(15) "Spoil" means the overburden as it is piled or deposited in the process of surface mining;

(16) "Surface mining" means all or any part of the process followed in the extraction of minerals from a natural deposit by the open pit or open cut method, rock harvesting, or any other mining process in which the strata or overburden is removed or displaced in order to recover the mineral or in which the surface soil is disturbed or removed for the purpose of determining the location, quality or quantity of a natural mineral deposit.

Section 3. Tennessee Code Annotated, Section 59-8-203 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Purpose of act. —

The general assembly finds that the unregulated rock harvesting and surface mining of minerals can cause soil erosion and landslides, stream pollution, and accumulation and seepage of contaminated water; contributes to floods; impairs the value of land for agricultural or other purposes; affects fish and wildlife and their habitats; counteracts efforts for the conservation of soil, water and other natural resources; impairs the owners' rights in neighboring property; creates fire hazards; can leave unreclaimed mine sites that create attractive nuisances and safety hazards; and in general creates conditions inimical to life, property and the public welfare so as to require the exercise of the state's police power in the regulation of surface mining. The general assembly further finds that there are wide variations in the circumstances and

conditions surrounding and arising out of the surface mining of minerals due primarily to differences in topographical, geological, and soil conditions, by reason of which it is necessary, in order to provide the most effective, beneficial and equitable solution to the problem, that broad discretion be placed in the authority designated to administer and enforce the regulatory provisions enacted by the general assembly. It is the purpose of this part, therefore, to provide for such regulation and control of surface mining so as to minimize its injurious effects.

Section 4. Tennessee Code Annotated, Section 59-8-204 is amended by deleting the existing language in its entirety substituting instead the following:

( ) Powers of the board and commissioner. —

(a) The commissioner shall have the authority and power to:

(1) Administer and enforce the provisions of this part and all rules and regulations and orders promulgated thereunder;

(2) Conduct or obtain investigations, research, experiments, training programs and demonstrations, and to collect and disseminate information relating to surface mining, reclamation of surface mined lands, and control of pollution of water and soil affected by surface mining;

(3) Issue orders requiring the adoption by an operator of remedial measures necessary for carrying out the provisions of this part or rules and regulations issued thereunder;

(4) Examine and approve or disapprove applications for permits, bonds, mining and reclamation plans, revegetation plans, and after-use plans submitted by operators;

(5) Establish standards for acceptable mining and reclamation of affected areas which shall be designed to achieve soil stabilization, control soil erosion, and obliterate

the scars of the stripping operation and ensure that the operation meets applicable soil and water quality standards;

(6) Make such investigations or inspections as the commissioner may deem necessary to ensure compliance with any provisions of this part, including the right to enter at any time upon an area affected for such purposes and the right to ingress and egress across intervening properties;

(7) Order the suspension and/or revocation of any permit for failure to comply with any of the provisions of this part or with any rules, regulations or orders adopted pursuant thereto;

(8) Order the immediate cessation of any operation that is started or continued without a permit as required by the provisions of this part; and

(9) Institute and prosecute all such court actions as may be necessary to obtain the enforcement of any order issued by the commissioner in carrying out the provisions of this part.

(b) The board shall have the authority and power to:

(1) In accordance with the administrative procedures act, §4-5-201 et seq., adopt rules and regulations pertaining to surface mining which in its judgment further the purposes of this part; such rules and regulations shall have the force and effect of law;

(2) Hear appeals from orders issued and penalties or damages assessed by the commissioner, or permit issuances, denials, revocations or modifications by the commissioner;

(3) Affirm, modify, or revoke such actions or orders of the commissioner;

(4) Issue notices of such appeals and subpoenas requiring attendance of witnesses and the production of evidence;

(5) Administer oaths; and

(6) Take such testimony as the board deems necessary.

(7) Any of the powers enumerated in subdivisions (2) through (6) may be exercised on behalf of the board by any member or members thereof appointed by the chair, subject to review by the board.

Section 5. Tennessee Code Annotated, Section 59-8-205 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Permits, requirements and criteria — Amendment — Appeal upon failure to grant — Renewal. —

(a) No operator shall engage in surface mining without having first obtained from the commissioner a permit. This permit shall authorize the operator to engage in surface mining upon the area of land described in the operator's application for a period not to exceed five (5) years from the date of its issuance. Such permit shall be granted by the commissioner only if the requirements and criteria of this part and any rules and regulations pertaining to those requirements are satisfied, and only upon the submission by the operator and approval by the commissioner of a bond as provided in §59-8-207 and a mining and reclamation plan as provided in §59-8-208.

(1) The granting of such permit shall also be subject to payment by the operator of the fee prescribed by regulation and upon submission of the following information:

(A) The name and permanent address of the operator as well as any temporary address to be used by the operator in connection with the operation covered by the permit. If the operator is other than an individual or corporation, the names and permanent addresses of all persons having an interest in the

operation shall be listed. If the operation is a corporation, the names and permanent addresses of all persons owning ten percent (10%) or more of the stock shall be listed;

(B) A map showing the general location of the affected area with relation to property lines, nearby towns, county lines, public roads, and streams;

(C) Identification of any surface mining permit or permits which the operator (or any person having an interest in the operation) holds or has previously held in Tennessee, together with a statement of whether or not any surface mine permit previously held by applicant operator or any person, partnership, or corporation now associated with, or in the past associated with, the applicant operator was suspended, revoked or terminated for failure to comply with the reclamation or revegetation requirements of such surface mining permit or permits, and a statement of whether or not any surface mine permit in any other state previously held by the applicant operator or any person, partnership, or corporation now associated with, or in the past associated with, the applicant operator was suspended, revoked or terminated for failure to comply with the reclamation and revegetation requirements of such permit and the penalty imposed, if any, in addition to such suspension, revocation or termination;

(D) Identification of the owner or owners or designated representative of the surface of the area affected by the permit, and the identification of the owner or owners of all surface area within five hundred feet (500) of any part of the area;

(E) Identification of the owner or owners of the minerals to be mined; and

(F) Identification of the source of the operator's legal right to enter and mine the minerals on the land affected by the permit.

(2) An operator who is otherwise complying with the provisions of this part may apply for an amendment of the permit by submitting an application and paying the required fee. If the application for an amendment of the permit provides for an increase or reduction in the acreage covered by it, the operator shall specify in writing any pertinent changes in the information furnished in the original application for a permit, and shall amend the bond and the mining and reclamation plan previously submitted, as necessary or appropriate to carry out the provisions of this part. The commissioner's approval of a proposed amendment of the permit shall be subject to the commissioner's approval of the revised (or new) bond and mining and reclamation plan, and further, subject to the commissioner's determination that the amendment satisfies the requirements and criteria of this part as well as any rules and regulations pertaining to those requirements.

(3) An on-the-ground inspection of the proposed affected area may be made by the commissioner or the commissioner's representative before a permit is issued.

(4) No application for a permit shall be approved by the commissioner if there is found, on the basis of the information set forth in the application or by on-the-ground inspection, that the requirements of this part, or regulations stemming therefrom, will not or cannot be observed, or that there is probable cause to believe that the proposed method of operation, road system construction, shaping or revegetation of the affected area cannot be carried out in a manner consistent with the purpose of this part and applicable air, noise, and water quality standards of this state.

(5) If the commissioner finds that the overburden on any part of the area of land described in the application would be such that landslides, deposition of sediment in



stream beds or water pollution cannot be strictly controlled, the commissioner shall delete such part of the land from the area for which the permit is granted.

(6) No permit for mining shall be granted if:

(A) The applicant has had a Tennessee surface mine permit revoked or suspended and the bond forfeited;

(B) The applicant is or was a partner in a partnership or was an officer, director or owner of ten percent (10%) or more of the stock of a corporation which has had a Tennessee surface mine permit revoked or suspended and the bond forfeited; or

(C) In the event that the applicant is a corporation or partnership, any partner in the partnership, or any officer, director or owner of ten percent (10%) or more of the stock of the corporation has had a Tennessee surface mine permit revoked or suspended and bond forfeited; unless the area covered by the previously suspended or revoked permit has been completely reclaimed by the responsible operator in compliance with the provisions of this part at no cost to the state of Tennessee.

(7) The commissioner may impose permit conditions that provide appropriate buffer zones from features on the mine site or in the vicinity that are likely to be impacted by the operation. Such features include, but are not limited to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, reservoir, water wells, officially designated scenic areas or other private or public property, and the board may adopt rules relating to this as well.

(8) The applicant for a surface mining permit shall give public notice at least one (1) day prior to the filing of an application in a newspaper of general circulation covering the county where the proposed surface mine is to be located of the applicant's intent to

operate a surface mine, and its proposed location. The information to be included in the public notice shall conform to regulations issued by the commissioner. In addition, the commissioner will receive any written statements from any interested person or groups of persons, and such statements shall be taken into consideration when the commissioner makes a determination of the application. The commissioner shall then, in not less than thirty (30) days from the filing of the application for a permit, either approve the application or notify the operator in writing, stating in detail the reason or reasons for not approving the application. If the application is approved, the permit will be granted upon the posting of the required bond. The action on the part of the commissioner in failing to grant any permit may be appealed to the board.

(9) Any holder of a valid surface mining permit issued pursuant to this part who wishes to continue the operation beyond the original permit expiration date shall make application for renewal within one hundred eighty (180) days prior to the expiration date of such permit, and upon meeting the requirements of this part and any rules and regulations pertaining to those requirements, the renewal shall be granted.

Section 6. Tennessee Code Annotated, Section 59-8-206 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Fees. —

The board may adopt rules providing for a schedule of fees for surface mining, including application fees and annual maintenance fees. These fees shall be deposited in the environmental protection fund created pursuant to § 68-201-101 and the provisions of the environmental protection fund act, §§68-203-101 et seq. shall apply to them.

Section 7. Tennessee Code Annotated, Section 59-8-207 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Performance bonds. —

(a) The bond filed with the commissioner shall be payable to the state of Tennessee and shall be executed by the operator and a corporate surety who is approved by the commissioner and properly authorized to act as such surety and licensed to do business in the state; provided, however, that the operator may elect to deposit cash or Irrevocable Letters of Credit or certificates of deposit, with the state treasurer in lieu of a corporate surety provided that all such instruments are executed in accordance with guidelines set forth by the commissioner. The state treasurer shall receive and hold such deposits in the name of the state of Tennessee, in trust, for the purposes for which such deposit is made, and shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the treasurer, on the written order of the commissioner, the whole or any portion of any securities so deposited upon depositing with the treasurer, in lieu thereof, other negotiable securities of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand and recover the interest income from securities as the same becomes due and payable; provided, however, that the state treasurer, at the request of the operator, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the operator.

(b) The bond or cash deposit or marketable value of the securities, which shall be conditioned upon the faithful performance of the provisions of this part, shall not be less than the amounts specified in rules adopted by the board. Liability under such bond shall be continuous until the reclamation provisions of this part have been fulfilled. The amount of the bond shall be increased or decreased to take account of any change in the acreage covered by the permit as provided in §59-8-205(a)(2).

Section 8. Tennessee Code Annotated, Section 59-8-208 is amended by deleting the existing language in its entirety and substituting instead the following:

(a) Each operator shall prepare and carry out a mining and reclamation plan for the area affected by the operator's operation, such plan to be submitted by the operator for the commissioner's approval with the application for a permit. Such plan shall provide for:

(1) Regrading the area to approximately the original or rolling topography, and elimination of all highwalls, spoil piles, and water-collecting depressions to the extent that such can be done with available overburden. Demonstrated new technology methods, approved by the commissioner, will be acceptable for highwall elimination and those established spoil piles, which no longer pose hazards to the environment as determined by the commissioner, shall not be included;

(2) Water drainage and silt control for all the affected areas so as to strictly control soil erosion, damage to adjacent lands, and pollution of streams and other waters, both during and following the mining operations. As mining begins, all drainways for the affected area shall be protected with silt traps or dams of approved design as directed by the regulations. The operator may elect to impound water to provide lakes or ponds of approved design for wildlife, recreational, or water supply purposes if it is a part of the approved reclamation plan;

(3) If the land is restored to permit cultivating with normal farm machinery, the operator is relieved of all further rehabilitation, except seeding with grass or legumes during the next growing season for quick erosion control;

(4) Carrying out any additional reclamation work required by the rules and regulations adopted by the board;

(5) A description of the use to which the area affected will be placed at the conclusion of reclamation; and

(6) When mining is temporarily terminated at a particular mining site or sites with substantial minerals remaining for probable future production, the operator is permitted to reclaim mined areas other than those included in the operator's current operations in lieu of reclaiming the mined areas where the mining has temporarily ceased.

(b) In addition to the requirements specified in subsection (a), the mining and reclamation plan submitted by the operator in connection with the operator's application for a permit shall include a detailed topographic map, prepared by a qualified engineer, geologist or other qualified professional approved by the commissioner, on a United States geological survey map, or aerial photograph, or equivalent as may be approved by the commissioner, and on such scale as the commissioner shall require by regulation.

(c) The mining and reclamation plan may, with the commissioner's approval, be changed at any time upon application by the operator, to take account of changes in conditions or to correct any previous oversight. After approval of a mining and reclamation plan or any amendment thereof by the commissioner, the operator shall not depart therefrom without the commissioner's further approval. The plan shall be carried out concurrently with the surface mining operation and all of the reclamation work shall be completed with respect to each acre within such time as permitted by the commissioner's regulations. Each operator shall file periodic reports, within such times and covering such periods as the commissioner shall reasonably require, showing those portions of the affected area for which reclamation in accordance with the approved plan

has been completed. The commissioner shall inspect such areas and shall notify the operator whether the reclamation is accepted as being in accordance with the approved plan or whether there are deficiencies which must be corrected.

Section 9. Tennessee Code Annotated, Section 59-8-209 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Revegetation plan.

(a) Each operator shall submit for the commissioner's approval and carry out after such approval a plan for preparation of the soil and subsequent revegetation of the affected area. Such plan shall take into consideration the approved after-use of the area affected and shall be designed to achieve quick and permanent soil stabilization by the planting of trees or shrubs and grasses or legumes or any prescribed combination thereof. The operator's obligation under the provisions of this part shall not be deemed discharged until the operator has provided revegetation which conforms to the revegetation standards established by the commissioner; provided however that the landowner may request, in writing, that permanent impoundment(s) be allowed to remain after mining. Additionally, if the land is to be reclaimed as pasture or to permit cultivation by normal farm machinery, the landowner may request, in writing, a waiver for the planting of trees.

(b) After the initial planting of the vegetative cover in accordance with the approved plan, the commissioner shall issue to the operator and the operator's surety a release of the surety bond for each acre of the affected area with respect to which the approved reclamation plan has been carried out, less the sum of five hundred dollars (\$500) which shall be in force and effect until satisfactory revegetation survival has been accomplished, the revegetation plan previously approved by the commissioner has been carried out, the commissioner has determined that further efforts toward revegetation are impractical, or until it has been forfeited by the operator.

Section 10. Tennessee Code Annotated, Section 59-8-210 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Annual report to be filed with commissioner.

An annual report shall be filed with the commissioner as prescribed in the regulations.

Section 11. Tennessee Code Annotated, Section 59-8-211 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Notice of noncompliance — Forfeiture of bond.

(a) If any of the requirements of this part or rules and regulations adopted pursuant thereto or the orders of the commissioner have not been complied with within the time limits set by the commissioner or by this part, the commissioner shall cause a notice of noncompliance to be served upon the operator, or, where found necessary, the commissioner shall order suspension of a permit or issue a cease order. Such notice or order shall be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this chapter or the regulations or orders of the commissioner.

(b) If the operator has not reached an agreement with the commissioner or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the commissioner and the performance bond shall then be forfeited to the commissioner.

Section 12. Tennessee Code Annotated, Section 59-8-212 is amended by deleting it and substituting instead the following:

( ) Tennessee surface mine reclamation fund — Other available funds.

All sums received through the forfeiture of bonds shall be placed in the state treasury and credited to a special agency account to be designated as the Tennessee surface mine

reclamation fund. This fund, appropriations for which are also authorized, shall be available to the commissioner for expenditure for the reclamation and revegetation of land affected by surface mining operations, including lands so affected prior to enactment of this part, provided that the proceeds from the forfeiture of any bond shall be used to the extent required in completing reclamation and revegetation of the area with respect to which the bond was posted. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of reclamation and revegetation of land as provided in this section until expended.

Section 13. Tennessee Code Annotated, Section 59-8-222 is amended by deleting the existing language in its entirety and substituting instead the following:

( ) Civil and Criminal Penalties

(a)(1) Any person who does any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:

(A) Violates the terms or conditions of a permit;

(B) Fails to complete a filing requirement or causes false information to be filed with the department;

(C) Fails to allow or perform an entry, inspection, monitoring, or reporting requirement;

(D) Violates a final determination or order of the board or commissioner;

(E) Violates any other provision of this part or any rule or regulation promulgated by the board.

(2) Any civil penalty shall be assessed in the following manner:

(A) The commissioner may issue an assessment against any person responsible for the violation;



(B) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections, and asking for a hearing in the matter involved before the board. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(C) Whenever any assessment has become final because of a person's failure to appeal the commissioner's assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment; and

(D) The commissioner, through the attorney general and reporter, may institute proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the pollution or violation occurred, in the name of the department.

(3) In assessing the civil penalty, the commissioner may consider the following factors:

(A) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(B) Damages to the state, including compensation for loss or destruction of wildlife, fish, and other aquatic life, resulting from the violation, as well as expenses involved in enforcing this section and the costs involved in rectifying any damage;

(C) Cause of the discharge or violation;

(D) The severity of the discharge and its effect upon the quality and quantity of the receiving waters;

(E) Effectiveness of action taken by the violator to cease the violation;

- (F) The technical and economic reasonableness of reducing or eliminating the discharge;
- (G) The social and economic value of the discharge source; and
- (H) The economic benefit gained by the violator.

(b) Any person who willfully and knowingly unlawfully falsifies any records, information, plans, specifications, or other data required by the board or the commissioner or who willfully fails, neglects, or refuses to comply with any of the provisions of this part is guilty of a Class B misdemeanor

(c) Nothing in this part shall abrogate the right of any person who is materially or personally damaged or injured by the operation of a surface mine to seek remedies against the responsible person in the courts.

Section 14. Any person who obtained a permit from the department for surface mining of a mineral for a particular operation prior to July 1, 2008 and whose bond had not been released in full by that date, shall be subject to all requirements regarding the performance standards, permit, bonding and reclamation in existence as of the date such permit was issued, which laws shall remain in full force and effect solely for the purpose of regulation of such sites; provided that any expansion of that operation will be bonded under the law in effect at the time of the application for the expansion.

Section 15. Except for sections 6, 7, and 8, which shall take effect for purposes of rulemaking upon becoming a law and for all purposes upon the effective date of the rules promulgated for each of those sections, this Act shall take effect on July 1, 2008, the public welfare requiring it; provided however that operations with a permit for surface mining of a mineral or a wastewater discharge issued prior to July 1, 2008 shall apply for, and obtain, a surface mining permit according to regulations adopted by the Board without having to obtain a bond or reclaim the previously permitted area, but they do have to bond and reclaim any area mined or permitted after July 1, 2008.

